

THE JUDICIAL REGIME OF THE FORESTRY NATIONAL FUND

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ABSTRACT

The special economic importance and the diversity of forestry fund in present both as public and private property impose the correct understanding of all judicial institutions that constitute the applicable judicial regime for all woods, for all lands destined for wood plantations, for those designated for woody nursery, technology requirements, production and forestry administration, of ponds, streams riverbeds, of other land with forestry destination, including the not productive ones comprised by forestry facilities at 1 January 1990, including the surface utilisation changes, according with the in – out operations performed in compliance with law, no matter the form of property.

The understanding of the way the administration of forestry fund is done is essential in order to comply with the forestry regime, no matter the form of land property, compulsory for all owners of woods and wood related land.

During the actual period the guard of forestry fund is a major goal in order to eliminate not only the illegal wood cutting yet its protection against any kind of destructions, damages, excessive grazing, poaching and other damaging deeds.

1. DEFINITION

The national forestry fund comprises the totality of woods, lands designed to reforestation, of those that serves for wood cultures, production or forestry administration, ponds, riverbeds or other lands with forestry destination, including the unproductive ones comprised in forestry improvements at 1 st of January 1990, including the surface usage changings according with the operations of in-out made according with the law.

In comparison with the evasive formulation of the above law text, there is need to detail which are the lands that enter into the national forestry fund, all of them having forestry usage, after the following classification:

- forests;
- lands with saplings with the regeneration process in progress;
- lands designed for forest planting as: degraded lands and lands without forests established according with the law to be planted by woods;
- land that serve for forests: nurseries, solarium, mother plants plantations;
- the lands that serve for forestry production: willow plantations, Christmas tree plantations, ornamental and fruit plantations;
- lands that serve for forestry administration: lands that serves for venison animals food and fodder production;
- lands given temporary to forestry personnel;
- lands occupied by buildings and yards associated with them: administrative headquarters, chalets, pheasant farms, trout farms, venison animals farms, roads and rails for forestry transport, industrial lands, other forestry facilities, lands temporary occupied by and the ones affected by litigation as well as forestry lands from border line and the strip line for protecting the national border and the lands designed for secure the state frontier;
- ponds, riverbed and nonproductive lands included into forestry improvements.

2. THE JUDICIAL REGIME OF THE NATIONAL FORESTRY FUND

The national forestry fund is, after case, a public or private property, with the specification that, no matter the type of the property, the forestry fund is a national asset.

Most of the forestry national fund is public, even though, according with 18/1991 Law of Forestry Fund much of forests have been given back to former owners (forests, bushes, woody pastures) which they belonged and which, by the effect of the above law, have been restituted from estate property to former owner property.

We certainly say that, in present days, the judicial regime of the national forestry fund is diversified compared with the period of 90 years nowadays being both public and private property.

In this context, we can notice that, according with the provision of art. 7 from Constitution from 1965 the lands were entirely exclusive estate property and it controlled the way all these land were administrated.

Related to the form of property, the national forestry fund can constitute a public property of estate or of administrative – territorial units or a private property, with the specification that it comprises the woody pastures included into the private domain.

Taking account the general regime of public property, according with it the assets that belong to this category are inalienable, imprescriptible and not complaint able and, because for the national forestry fund are not derogation rules, they are applicable as they are.

The inalienability of public property assets means that they cannot be sold, which means that the property right cannot be transferred to other person on institution and they cannot be divided as property right (life interest, usage, servitude and superficie) and cannot be the object of real accessory rights (gage or mortgage).

We have to underline the relative character of inalienability which means that the rule does not apply but only to public domain and only while this asset belongs to the public domain.

The second principle that characterizes the public domain is imprescriptibility which means that the movable property of the public domain cannot be taken by prescription, no matter how long it is, because they are imprescriptible.

The imprescriptible character of the public domain, under acquisitive aspect is materialized by the fact that the right of property of some assets cannot be gained by other person by usucapion, with the case of real estate or by right possession, with the case of movable property.

Under extinctive aspect, the imprescriptibility determine the action of claiming of such asset does not end by not asking, it could be extinguished by invoking the usucapion, as with the case of private domain or private property.

Mostly, the inalienability and imprescriptibility have been explained by the fact that the public domain have a general interest and for it there are needed that the specific assets to have these features.

We underline the fact that what is discussed related with the principle of inalienability of private domain is not the existence of the property right because it exists but the way it is put in place, taking account that it is restrained because of general interest on above mentioned assets.

Interdiction of complaint for public domain is a natural consequence of inalienability, this feature assuming that the assets from public domain cannot be asked by the creditors of the owner by judicial enforcement.

It is easy to notice that if the asset could be asked by creditors, the inalienability would be lack in sense, it would become illusory and could be avoided, in the conditions when a creditor could ask judicial enforcement and this asset to be sold in auction in a legal procedure, it means its selling.

3. THE FORESTRY REGIME APPLICABLE TO NATIONAL FORESTRY FUND

The national forestry fund is regulated by forestry regime, an assemble of technical forestry, economic and judicial norms on the management, culture, exploitation, protection and guard of this fund having as finality the sustainable administration of forestry ecosystems.

The elaboration of norms that constitute the forestry regime is done by central public authority who responds of forestry, namely the resort ministry (Ministry of Waters, Forests and Environment Protection) that renders the control of applying this regime, the complying with it being compulsory for all owners of forestry fund.

The forestry fund as a public property of administrative territorial units is managed through forest districts that function as autonomy institutions of local interest or on the basis of contracts with forest districts of state.

The way of management of national forestry fund is regulated by forestry improvements that constitute the base of specialty cadaster and the title of property of state for the forestry fund in property.

The forestry improvement is elaborated on production units or/and of protection complying with technical norms. The regulation of the production process for forests on surfaces less than 100 ha included in units of production/protection constituted on territory of the same locality is made at brush level with the condition of ensuring the continuity at this level, the establishing of forestry improvement on surfaces larger than 10 being compulsory, because this limit is comprised in the law as compulsory for owner.

We underline the fact that during the period of a forestry improvement it is forbidden to elaborate another forestry improvement for the same wood or for a part of it, excepting the cases provided by technical norms.

These norms are elaborated and approved by the public authority charged with forestry activity, in collaboration with the Academy of Agricultural and Forestry Sciences Gheorghe Ionescu-Sise ti, complying with the following principles: continuity and permanence of forests, functional efficacy, conservation and improving biodiversity, economic.

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